

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 435 OF 2004.

Grasim Industries Limited,
having its office at 91,
Sakhar Bhavan, 230, Nariman
Point, Mumbai 400 021.

.... Applicant.

Versus.

1. Mini Gulati.
2. Neelam Bhatia.
3. Mrs.Mamta Bhatia.
4. Mrs.Rita Bhatia.
All through the Constituted
Attorney Shri Rajkumar Gulati,
residing at Flat No.4, Vasant
Building, Pedder Road,
Mumbai 400 026

5. State of Maharashtra.

.... Respondents.

Shri K.G.Menon, Senior Counsel with Shri V.B.Trivedi,
Shri Faisal Sayyed and Shri S.R.Tilokchandani i/by
M/s.M.K.Ambalal & Co. for the Applicant.

Shri P.R.Parikh for the Respondents Nos.1 to 4.

Shri A.S.Gadkari, A.P.P. for the Respondent No.5-State.

CORAM : ABHAY S. OKA, J.

DATED : 18th August, 2005.

ORAL JUDGMENT.

1. The learned Counsel appearing for the parties were heard day-before-yesterday. I have heard further submissions of the learned Counsel appearing for the Respondents Nos.1 to 4 today. When the Revision

Application was taken up for hearing on the last date, the learned Counsel appearing for the parties were put to notice that the Revision Application will be decided finally.

2 The Applicant-company filed an Application before the Court of the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, under section 145 of the Code of Criminal Procedure, 1973 (herein after referred to as "the said Code"). The Application was originally filed against one Shantilal Bhatia and one Vinod Bhatia. On the application made by the Respondents Nos.1 to 4 herein, they were impleaded as parties to the Application by the learned Magistrate. On the application made by the Applicants on 7th May 2003, a preliminary order under section 145(1) of the said Code was passed directing the Respondents in the Application to attend the Court on 12th June 2003 and to file written statement of their respective claims in respect of possession of the subject matter of the Application. The present Respondents applied under section 145(5) of the said Code for cancellation of the preliminary order passed under sub-section (1) of section 145 of the said Code. By order dated 12th February 2004, the learned Metropolitan Magistrate

rejected the said application. Being aggrieved by the order dated 12th February 2004, the Respondents Nos.1 to 4 herein filed a Revision Application under section 397 of the said Code to the Sessions Court. By the impugned Judgment and Order dated 3rd July 2004 passed by the learned Additional Sessions Judge, Mumbai, the Revision Application was allowed and the order passed under sub-section (1) of section 145 of the said Code in favour of the Applicant was set aside.

3. The learned Counsel appearing for the Applicant submitted that the learned Additional Sessions Judge ought not to have entertained the Revision Application under section 357 of the said Code for challenging the order passed under sub-section (1) of section 145 of the said Code which is in the nature of an interlocutory order. He submitted that in any event the learned Judge ought not to have interfered with the discretionary order passed by the learned Magistrate recording his subjective satisfaction. He submitted that the pendency of the proceedings in the Debt Recovery Tribunal was no ground to drop the proceedings under section 145 of the said Code. He lastly submitted that merely because the Police have not taken any action is no ground to set aside the order under section 145(1) of the said Code.

4. The learned Counsel appearing for the Respondents Nos.1 to 4 submitted that a dispute as regards the property in question is pending before the Debt Recovery Tribunal and on the basis of the orders passed by the said Tribunal the property has been attached and it is put to sale. He submitted that the property in question was never in exclusive possession of the Applicant as the Applicant was admittedly given only one key out of the two keys of the lock. He submitted that as the Applicant was not in exclusive possession, the application at the instance of the Applicant under section 145(1) of the said Code was not maintainable. He has placed reliance on certain decisions of this Court and other High Courts and submitted that the said decisions were placed before the learned Additional Sessions Judge who has not adverted to the same. He submitted that unless it was shown that there was a threat of breach of peace in the area, proceedings under section 145(1) cannot be entertained. He submitted that the dispute between the parties is of civil nature and it has to be adjudicated by the Civil Court. He submitted that the learned Magistrate ought to have recalled the order passed under section 145(1) of the said Code.

5. I have considered the submissions made by the learned Counsel appearing for the parties. The preliminary order passed under section 145(1) of the said Code by the learned Magistrate records subjective satisfaction that there is a dispute in respect of the property and the dispute is likely to cause breach of peace. It will be necessary to refer to the reasoning of the learned Additional Sessions Judge. The grounds given by the learned Judge for setting aside the order of the learned Magistrate can be summarised as under:

- (i) The Applicant had approached the Police Station along with a complaint and the Police were aware about the dispute pertaining to the property. Only in exceptional circumstances that the Court could have passed order under section 145(1) at the instance of a private party when the Police have not taken any action.
- (ii) There are no reasons mentioned for recording subjective satisfaction in the order under section 145(1).

- (iii) The Respondents Nos.1 to 4 brought to the notice of the learned Magistrate that the disputed property was the subject matter of proceedings which is pending before the Debt Recovery Tribunal and the Income Tax authorities have attached the same property.
- (iv) The learned Magistrate was made aware that the Respondents Nos.1 to 4 were claiming to be in joint possession of the property and therefore, the learned Magistrate ought to have directed the parties to approach the Civil Court.
- (v) The Debt Recovery Tribunal declined to grant any relief to the Applicant on the basis of the application made by the Applicant.

6. A reference will have to be made to the decision of the Apex Court reported in AIR 1968 S.C. 1444 (R.H.Bhutani v/s. Miss Mani J.Desai & ors.). In paragraph 9 of the said decision, the Apex Court has considered the scope of the power of the revision vested

in the High Court against an order passed under section 145(1) of the Code. Paragraph 9 reads thus:

"9. The satisfaction under sub-s.(1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the sub-section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. **The High Court in the exercise of its revisional jurisdiction would not go into the question of sufficiency of material which has satisfied the Magistrate.**" (Emphasis supplied).

Thus, the law laid down by the Apex Court is that the High Court in exercise of its revisional jurisdiction

cannot go into the question of sufficiency of material on the basis of which the Magistrate has recorded satisfaction. The Apex Court also held that the language of sub-section (1) is clear which shows that the subjective satisfaction can be arrived at by the learned Magistrate both from the Police Report or from other information which includes an application by the party dispossessed.

7. When the Apex Court has held that the application of the party dispossessed can be the basis of subjective satisfaction under sub-section (1) of section 145, the learned Additional Sessions Judge was in error while holding that when the Police have refused to submit any report, the learned Magistrate could have acted upon the application of the private party only in exceptional circumstances. If law permits subjective satisfaction to be recorded on the basis of the Application by the private party, in my view no interference was called for in a Revision Application only on the ground that the Police have not chosen to take any action inspite of the fact that the Applicant has approached the Police Station with a complaint. Moreover the Apex Court has held that the High Court in exercise of revisional jurisdiction cannot go into the

question of sufficiency of material which has satisfied the learned Magistrate while passing order under section 145(1) of the said Code.

8. It will be necessary to refer to another decision of the Apex Court reported in 2000 S.C.C. (Cri.) 806 (Amresh Tiwari v/s. Lalta Prasad Dubey & anr.). The Apex Court in the said decision held thus:

"We clarify that we are not stating that in every case where a civil suit is filed, section 145 proceedings would never lie. **It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under section 145 should not be allowed to continue.** This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate." (Emphasis supplied).

Thus pendency of every civil proceeding is no ground to say that the proceedings under section 145 of the said Code would not lie. The Apex Court clarified that only when a civil suit for possession or declaration of title in respect of the same property is pending, it will operate as a bar for institution of proceedings under section 145 of the said Code. In the present case the only proceedings which are pending are filed by the Bank of Baroda for recovery of loan and the said proceedings are pending before the Debt Recovery Tribunal under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In the said proceedings property is said to have been attached and is ordered to be sold. By no stretch of imagination the proceedings filed by the Bank for recovery of its dues against the borrower can be said to be a civil suit for possession of the property or a civil suit for declaration of title in respect of the property. Merely because in the said proceedings, the property is attached will not take away the jurisdiction of the learned Magistrate to initiate action under section 145 of the said Code. No doubt when final orders are passed in the proceedings under section 145, these are the factors which will have to be considered by the learned Magistrate. However, in this Revision Application, the

question is whether the learned Magistrate has no power to initiate proceedings only on the ground of pendency of the proceedings before the Debt Recovery Tribunal taken out by the Bank. In my view, the order under section 145(1) could not have been set aside on the ground of pendency of proceedings before the Debt Recovery Tribunal. For the same reason the order could not have been disturbed on the ground that the Income Tax authorities have attached the same property.

9. The contention raised by the Respondents Nos.1 to 4 regarding joint possession of the property is on merits of the proceedings. The Respondents Nos.1 to 4 can file their written statement and produce appropriate material before the learned Magistrate for establishing their said contention. Reference will have to be made to the decisions relied upon by the learned Counsel for the Respondents Nos.1 to 4. There cannot be any dispute regarding the legal propositions laid down by this Court in the Judgment reported in 1999 (2) Mah.L.J. page 438 (Jamna Prasad Kirodilal Sharma v/s.Grendra Kumar Gopichand Mittal) and 1999 (3) Mah.L.J. page 919 (Mohammed Ishaque v/s.Sunil Rupchand Bhatia & ors.). In the case before me the question is whether the Revisional Court could have disturbed the preliminary

order passed under section 145(1) by the learned Magistrate after recording subjective satisfaction in exercise of revisional jurisdiction. In view of what is held by the Apex Court in the case of R.H.Bhutani (supra), in my view, the aforesaid decisions will not help the Respondents Nos.1 to 4 in so far as the challenge to the preliminary order is concerned. Reliance was placed on the decision of the Madras High Court reported in 1954 Cr.L.J. page 1558 (Re: Ivaturi Sambhasiva Rao - Petitioner). The Madras High Court has held that the Magistrate starting proceedings under section 145 can drop the proceedings under various circumstances including that no breach of the peace is apprehended. Reliance is also placed on a decision of the Allahabad High Court reported in AIR 1958 Allahabad page 803 (Ganga Singh v/s. Raj Bahadur Singh & ors.). The Allahabad High Court held that at any stage of the proceedings the learned Magistrate can reconsider the order passed under sub-section (1) of section 145 of the said Code as the said order is not final.

10. In my opinion the learned Additional Sessions Judge could not have interfered with the impugned order passed under section 145(1) of the said Code in view of the law laid down by the Apex Court in R.H.Bhutani's

case (supra). Hence the impugned Judgment and order deserves to be quashed and set aside.

11. The Revision Application is allowed. The impugned Judgment and order dated 3rd July 2004 passed by the learned Additional Sessions Judge, Mumbai, is quashed and set aside and the orders passed by the learned Magistrate on 7th May 2003 and 12th February 2004 are restored.

12. It is made clear that the findings recorded in this Judgment are for the limited purpose of examining the order passed by the Revisional Court. All contentions of the parties in the pending proceedings under section 145 of the said Code are expressly kept open. It is also clarified that the Respondents Nos.1 to 4 are free to take out appropriate proceedings on the basis of the subsequent events, if any, in accordance with the law.

Judge.